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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/069,595

06/04/2002

Peter Ahnblad

1506-1002

3709

466 7590 01/19/2007
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EXAMINER

MACNEILL, ELIZABETH

ART UNIT

PAPER NUMBER

3767

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	10/069,595		AHNBLAD ET AL.	
	Examiner		Art Unit	
	Elizabeth R. MacNeill		3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8 and 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to applicant's amendments and request for continued examination submitted 27 December 2006.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1 and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the description of the nozzle shaped channel with restriction section, applicant has claimed that the restriction section has "a changing inner diameter so that each cross-sectional diameter of the restriction section is different from all other interior cross-sectional diameters of the restriction section." Based on figures 1-3 of the application, this configuration is impossible since the restriction section is "hourglass" shaped and the lumen is continuous.

Claim Objections

3. Claim 21 objected to because of the following informalities: "apart" should be changed to "a part" in the 3rd paragraph of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1,3,4,21,and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Gacka et al (US 4,815,666).

Regarding claims 1-4,21, and 37, Gacka teaches an outlet portion (110) capable of use as a nasal sprayer, with an outlet end (118), a connection end (112), a nozzle shaped channel with restriction portion (middle section between 116 and 114, see Fig 3), a outlet end portion (116), connection end with straight passageway (114) where the exterior of the enlarged circumference portion (118) is droplet shaped.

6. Claims 1,3,4,6-8, 21,22,24 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Sullivan et al (US 2002/0092521)

Regarding claims 1,3,4,6-8, 21,22,24 and 27, Sullivan teaches an outlet portion for a nasal rinser comprising an outlet end (88), a connection end (72) with straight passageway (which 20 is seated in), a nozzle shaped channel (85) with a restriction portion with hourglass shape, an outlet end portion (88), where the exterior is balloon

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shaped, and the rinser includes either a syringe with piston (90) or a flexible balloon shaped container (248) for holding and dispensing the rinsing liquid

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gacka as applied to claim 1 above, and further in view of Markus (US 5,843,043).

Regarding claims 5-7, Gacka teaches an outlet sprayer portion as above, but fails to teach a receptacle with a piston for holding and expelling rinsing liquid. Markus discloses a nasal rinser which uses a receptacle (11) for storing rinsing fluid and a plunger (29) to expel the liquid coupled with outlet tip (13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the outlet of Gacka with the dispenser of Markus in order to provide a means for dispensing a specific amount of treatment fluid (Col 2 line 54)

9. Claims 5,8,22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gacka as applied to claims 1 and 21 above, and further in view of Flagg (US 1,507,475).

Regarding claims 5,8,22, and 24, Gacka teaches an outlet sprayer portion as above, but fails to teach a flexible exterior balloon shape for holding and expelling rinsing liquid.

Flagg discloses a nasal rinser which uses a receptacle (2) for storing rinsing fluid and

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which is flexible to expel the liquid coupled with outlet tip (5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the outlet of Gacka with the dispenser of Flagg in order to provide a means cleaning the inner walls of the nose without pushing the rinsing fluid past the lower portion of the nostrils (lines 55-60)

10. Claims 23, 25, 26, and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Gacka and/or Sullivan.

Gacka and/or Sullivan teach the invention as claimed except for using silicone rubber as the material of the outlet portion. It is considered to be within the ordinary skill of one trained in the art to use a certain known material on the basis of its suitability for the intended use.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gopferich et al (US 2004/0116958) teaches an hourglass-shaped discharge path for a nasal rinser, but due to the PCT filing date is not prior art. See Fig 5.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth R. MacNeill whose telephone number is (571)-272-9970. The examiner can normally be reached on 7:00-3:30pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ERM

*Elizabeth
MacNeil
1/11/07*

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SUPERVISORY PATENT EXAMINER
Kevin C. Sirmons